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EXAMINER

NGUYEN, TAN D

ART UNIT PAPER NUMBER

3629

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/813,636

**Applicant(s)**

BORTON, GREGORY F.

**Examiner**

Tan Dean D. Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed 10/28/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure as shown in independent method claim 1 is as follows: "wherein each task entry is assigned a subset of the plurality of resources".

Applicant is required to cancel the new matter in the reply to this Office Action. The examiner has scanned the specification but does not find the support for this limitation.

### *Claim Status*

Claims 1-12, 19-24 are active and are rejected as followed.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 1-6, 22, 7-12, 19-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

In order for the claimed invention to be statutory subject matter, the claimed invention must fall within one of the four statutory classes of invention as set forth in § 101 (i.e. (1) a process, (2) machine (apparatus), (3) manufacture (article of manufacture), or (4) composition of matter).

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In the present case, Method claim 1 is directed to a “method for activity-based modeling for an organization”, which is not within one of the classes of invention set forth in § 101.

The “method for activity-based modeling for an organization” comprising the steps of:

- (a) receiving a pluralities of task entries, ... ;
- (b) receiving a pluralities of resource entries, ... ;
- (c ) receiving mapping information ... ;
- (d) processing the pluralities of task entries, .... With a computer to formulate a business model; and
- (e) generating a forward-looking report after the processing step and related to the business model”,

are merely a disembodied abstract idea and do not produce a (1) useful and (2) tangible, and (3) concrete result. The result of the instant invention is a business model being displayed on a report. The model might be considered “useful” in reporting a trend or other business performance parameter. However, § 101, 2<sup>nd</sup> test requires that the result be reproducible or repeatable to meet the tangible and concrete requirement. See In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Circuit 2000). In the instant case, it’s not clear whether the result of the model is predictable or repeatable because of: (1) in the 1<sup>st</sup> step, the task entry is comprised of defined types of future action which will generate a result, this is not totally predictable since it deals with the future of things, (2) in the 2<sup>nd</sup> step, each resource entry ... which are presumed to be

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available in the future, this is also not predictable since the presumed parameters may not be available in the future, and (3) the result of the processing step is not predictable or repeatable because it depends on the modeling/formulation software or formulation to generate the model. There is no citation or an example in the specification of how the claimed invention is carried out. Moreover, there is no physical transformation of anything to another state or thing even though this is dispositive. Therefore, claims 1-6, 22, 7-12, 19-21 are thus drawn to the abstract idea of preparing an activity-based business model.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the 1<sup>st</sup> paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claims 1-6, 22, 7-12, 19-21, 23, 24, are rejected under 35 U.S.C. 112, 1<sup>st</sup> paragraph, as failing to comply with the enablement requirement.**

The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It's not clear how step (d) above is carried out to formulate a business model since no "activity information" (or business subject or scope) has been entered? what are the relationship of each element in (d) with respect to each other? I.e. the "mapping information" with respect to (1) and (2) previously? No example of a formulated business-model containing 2 items

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“task” and “resources” has been cited and this would make it difficult for a skilled artisan to make and use the invention.

**6. Claims 1-6, 22, 7-12, 19-21, 23, and 24 are rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

In claim 1, phrases “task entries” and “resource entries” are vague and indefinite because “entries” relate to “information entered” and not the type of information. It appears that the correct term should be “task data” or “task information” wherein the data/information are entered manually or automatically or “entries”. Note, that this is demonstrated on page 2, “Description of the specific embodiments”, line 31, “begins with entry of setup information 108”. In other word, “task information” or “information about task” was entered as “entry”. Dependent claims 2-5 (dep. of 1) with phrase related to “entry”, are rejected for the same reasons set forth above. Claims 7-12, 19-21, 23, and 24 are rejected for the same reason as shown in claim 1 above.

7. Claim 6 calls for “wherein the organization comprises at least 1 of a project (s)” which is vague and indefinite since it’s well known to a skilled artisan that a project, a single or multiple activities/tasks, can not be called an organization, normally consists of people working in an entity such as company, store, team, etc.

#### ***Claim Objections***

1. Dependent claims 2, 8-11 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous

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claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It's not clear how claim 2 further limit the scope of claim 1 with calls for "doesn't require historical information from a general ledger" or dealt with cost.

2. Similarly, dep. claim 11 which calls for "an activity-based costing report" is vague and indefinite and does not further limit the scope of the claimed invention which calls for "without requiring historical information from a general ledger for the organization" or cost-related data/information.

As for dep. claims 8-10, it's not clear how these dependent claims further limit independent claim 7.

Independent Claims 23 (medium) and 24 (system) are objected because they contain the language of independent method claim 1 in the body of the claims.

Applicant is requested to rewrite claims 23 and 24 in their independent forms.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 23 (article), 24 (system) are rejected under 35 U.S.C. 102(b) as being anticipated by MORGAN et al.**

As for claim 23, which deals with a computer-readable medium having computer executable instructions, this is rejected over the computer-readable medium of MORGAN et al with executable instructions to carry out the method as shown in Figs. 1, 2. Note that the phrase "for performing the computer-implemented method for activity-based business modeling, this carries little patentable since it's non-functional data. Moreover, the medium does not connect to a computer and ordering / instructing the computer to carry out the steps.

As for claim 24, which deals with a computer system adapted to perform computer-implementable method, this is rejected over the computer system of Fig. 1 or 2. Note that in an apparatus claim, only structural elements receive patentable weight. Intended use of the computer system has no patentable weight.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.



7. Claims 1-6, 22, 7-12, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over MORGAN et al (US patent 5,799,286).

As for independent method<sup>1</sup> claim 1, MORGAN et al fairly teaches a method for activity-based business modeling for an organization comprising the steps of {see col. 1, line 67 (or C1:L67 for simplification), C2:L1-16, C3:L59):

(a) receiving a plurality of task entries, wherein each task entry is comprised of estimated data defined types of future action which will generate a result { see C7:L57-67, C8:L1-11 "*estimated projections ..., data entry reflects anticipating change, estimated product volumes are entered...*, C19:L52-62 "*activity based forecasting provides **future** spending information in terms of activities, ...*};

(b) receiving a plurality of resource entries, wherein each resource entry indicates any associated personnel, hardware, software (or equipment which normally includes computer, computer system and other IT equipment, see also c4:22 "hardware, software") and services {see C4:L1-4, C20:L5-10};

(c) receiving mapping information showing relationship between the task entries and resource entries {see C4:L21-23; "relational database 12" on C2:L5-25, c5:65, Fig. 7 (114, 126), claim 1};

(d) processing the plurality of task entries, resource entries and mapping information to formulate a business model {see Fig. 1 (12), C2:L62-67, C4:L23-25 "maps the money spent";

(e) generating a forward-looking (or forecast) report after (d) and related to the business model" {see Fig. 1, (50), "*TREND*", "*FORECASTING*", C4:L5-10, C5:L1-6}.

As for the negative limitation of “that does not require historical information from a general ledger” in the preamble, this carries little patentable weight since it does not appear in the body of the claim. Moreover, as shown MORGAN et al c1:37-41, 50-55 or c3:55-60, c4:25-42, the use of the historical information from a general ledger in the modeling process is for the purpose of making result more realistic, reliable or accurate since there is cost/cost basis associated with the activities involved. Note also on c3:55-60 which teaches the option of “may include” general ledger for the benefit above if desired but not necessary. Therefore, it would have been obvious to avoid the use of the historical information from a general ledger in the modeling process if making result more realistic, reliable or accurate or associated with cost is not critical or important as compared to other criteria such as speed, etc., or if the general ledger (GL) data is not available. Furthermore, elimination or removal of an element or step for its intended function in a method is well known practice and would have been obvious to an artisan, absent evidence of unexpected results. See In re Karlson, 136 USPQ 184, 186. Note also, on col. 7, lines 65-67, MORGAN et al discloses the input of “data entry 114 reflects the anticipated change”, which indicates data reflecting future conditions or future task entries the respective resource entries.

**As for dep. claim 2** (part of 1), which deals with well known organization cost/expense parameter, i.e. overhead, this is fairly taught in Fig. 1 (26) or Fig. 16 (280).

**As for dep. claim 3** (part of 1), which deals with well known organization resource parameters, i.e. a system or apparatus, this is fairly taught in Fig. 1 (22) or c4:1-4 (equipment).

**As for dep. claim 4** (part of 1), which deals with a source of data entry for an entry above, i.e. from a template, this is non-essential to the scope of the claimed invention and is fairly shown in Fig. 18B. Alternatively, the use of other similar modules (Fig. 1, 18) containing template format would have been obvious as mere using other module format to achieve similar results. As for the limitation “not produced by an end user”, this is inherently included in the teachings of MORGAN et al. Moreover, this carries little patentable weight since it’s a negative limitation and in a passive state.

**As for dep. claim 5** (part of 1), which deals with similar limitation as in dep. claim 4 above, it’s rejected for the same reason set forth in dep. claim 4 above.

**As for dep. claim 6** (part of 1), which deals with well known organization type parameter, i.e. department or whole company, this is fairly taught in c1:56, or c2:40-57.

**As for dep. claim 22** (part of 1), which deals with well known task information parameters or type of task information, i.e. projected volume/quantity and duration, this is non-essential to the scope of the claimed invention and is fairly taught in c3:66 – c4:11, c17:50-55 “*product volumes ... for any number of months*”, c18:30-35.

**As for independent method<sup>2</sup> claim 7**, which has similar limitation as in independent method claim 1 (combining receiving steps (a) and (b) into 1 step), it’s rejected for the same reason set forth in claim 1 above.

**As for dep. claim 8** (part of 7), which deals with well known organization input parameters, i.e. activity entry or task entry, this is fairly taught in c4:1-4.

**As for dep. claim 9** (part of 7), which deals with well known organization input parameters, i.e. system entry, this is fairly taught in c4:1-4 or c4:22-24.

**As for dep. claim 10** (part of 7), which deals additional limitation of “determining a demand” for a specific entry such as system, this is inherently included c4:1-10 wherein a forecast or trend report is determined.

**As for dep. claim 11** (part of 7), which deals immaterial modification, type of forecast report, this is inherently included c4:1-10 “value-added report” or would have been obvious to a skilled artisan as mere selection other similar type of report for intended purpose.

**As for dep. claim 12** (part of 7), which has similar limitation as in dep. claim 4 above, it’s rejected for the same reason set forth in claim 4 above.

**As for independent method<sup>3</sup> claim 19**, which has similar limitation as in independent method claims 1, 3, 5 (combining receiving steps (a) and (b) into 1 step), it’s rejected for the same reason set forth in claim 1 above.

**As for dep. claims 20-21** (part of 7), which have similar limitations as in dep. claims 5-6 (part of 1) respectively above, they are rejected for the same reason set forth in claims 5-6 above.

8. **Claims 1-6, 22, 7-12, 19-21, 23 and 24 are rejected (2<sup>nd</sup> time) under 35 U.S.C. 103(a) as being unpatentable over CALVER (US 2001/00132092).**

**As for independent method<sup>1</sup> claim 1**, MORGAN et al fairly teaches a method for activity-based business modeling for an organization comprising the steps of {see Fig. 16}:

(a) receiving a plurality of task entries (filled template), wherein each task entry is comprised of defined types of future action which will generate a result { [0080, 0081]};

(b) receiving a plurality of resource entries, wherein each resource entry indicates any associated personnel, hardware, software (or equipment which normally includes computer, computer system and other IT equipment, see also c4:22 "hardware, software") and services {see 0052, 0054, 0082}};

(c ) receiving mapping information showing relationship between the task entries and resource entries {see 0127, 0128, Fig. 15, 16};

(d) processing the plurality of task entries, resource entries and mapping information to formulate a business model {see [0127, 0128]};

(e) generating a forward-looking (or forecast) report after (d) and related to the business model" {see [0084]}.

As for the negative limitation of "that does not require historical information from a general ledger" in the preamble, this carries little patentable weight since it does not appear in the body of the claim. Moreover, this is inherently included in the teaching of CALVER since no mentioning of taking historical data from a general hedger.

**As for dep. claim 2** (part of 1), which deals with well known organization cost/expense parameter, i.e. overhead, this is fairly taught in Fig. 15 or Fig. 16.

**As for dep. claim 3** (part of 1), which deals with well known organization resource parameters, i.e. a system or apparatus, this is fairly taught in Fig. 15, 16.

**As for dep. claim 4** (part of 1), which deals with a source of data entry for an entry above, i.e. from a template, this is non-essential to the scope of the claimed invention and is fairly shown in [0065, 0068, 0069]. Alternatively, the use of other similar modules containing template format would have been obvious as mere using other module format to achieve similar results. As for the limitation “not produced by an end user”, this is inherently included in the teachings of CALVER. Moreover, this carries little patentable weight since it’s a negative limitation and in a passive state.

**As for dep. claim 5** (part of 1), which deals with similar limitation as in dep. claim 4 above, it’s rejected for the same reason set forth in dep. claim 4 above.

**As for dep. claim 6** (part of 1), which deals with well known organization type parameter, i.e. department or whole company, this is fairly taught in Fig. 16, 0054, 0070.

**As for dep. claim 22** (part of 1), which deals with well known task information parameters or type of task information, i.e. projected volume/quantity and duration, this is non-essential to the scope of the claimed invention and is fairly taught in Figs. 15, 16, 0139, 0140, 0141.

**As for independent method<sup>2</sup> claim 7**, which has similar limitation as in independent method claim 1 (combining receiving steps (a) and (b) into 1 step), it’s rejected for the same reason set forth in claim 1 above.

**As for dep. claim 8** (part of 7), which deals with well known organization input parameters, i.e. activity entry or task entry, this is fairly taught in 0068-0071.

**As for dep. claim 9** (part of 7), which deals with well known organization input parameters, i.e. system entry, this is fairly taught in Fig. 6, 0068-0069.

**As for dep. claim 10** (part of 7), which deals additional limitation of “determining a demand” for a specific entry such as system, this is inherently included [0082-0084, 0139, 0140] wherein a forecast or trend report is determined.

**As for dep. claim 11** (part of 7), which deals immaterial modification, type of forecast report, this is inherently in Figs. 15 and 16.

**As for dep. claim 12** (part of 7), which has similar limitation as in dep. claim 4 above, it's rejected for the same reason set forth in claim 4 above.

**As for independent method<sup>3</sup> claim 19**, which has similar limitation as in independent method claims 1, 3, 5 (combining receiving steps (a) and (b) into 1 step), it's rejected for the same reason set forth in claim 1 above.

### ***Response to Arguments***

9. Applicant's arguments (3 major) filed 10/28/05 have been fully considered but they are not persuasive.

1) Applicant's request for a clearer explanation of the 35 U.S.C.101 rejection is shown on paragraph 2 above. The insertion of the term “with a computer” on the 4<sup>th</sup> step is insufficient to overcome the rejections.

2) Applicant's comment that Morgan teaches a “backward facing” activity based management system and not “future action” as in the claimed invention is not persuasive because the limit “future action” reads over “forecasting” or

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“trend”, etc., as taught by Morgan on col. 4, lines 5-10, c19:52-67. Moreover, the use of “historical data” with respect to cost (from a general ledger) for forecasting is for producing a realistic, operational, and meaningful view of how the money was spent {see col. 4, lines 25-28}; however, as mentioned above, if producing a realistic, operational, and meaningful view of how the money was spent is not critical or the if historical data (general ledger) is not available, then it would have been obvious to bypass it (the usage of historical financial data) if desired. Note that on col. 7, lines 56-67, col. 8, lines 1-11, MORGAN et al discloses the use of 2<sup>nd</sup> type of data, estimated data and data entry reflecting anticipated change, which read over the limitations of the task entries of claim 1 above.

3) Applicant’s comment with respect to the objections of the dependent claims are not persuasive, for example, it’s not clear how dep. claim 2 further limits and fits in the steps and elements of claim 1 above? Does it further limit 1<sup>st</sup> step or last step and where or which element? Mere saying that it’s more limiting than claim 1 is insufficient.



***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

No claims are allowed.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).


In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss can be reached at (571) 272-6812.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
March 13, 2006

  
**DEAN T. NGUYEN**  
**PRIMARY EXAMINER**